

## PROSECUTION OF CHILD EXPLOITATION CASES

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## Types of Investigations

From Law Enforcement

- Undercover sting
- Email
- F-serves
- Bulletin boards
- Private Yahoo! Groups
- P2P
- Live web cam sex shows
- NCMEC tips

## Types of Investigations

From Law Enforcement

- Credit Card Orders
- Cell phones
- Observers/household members
- Computer repair shops
- Co-workers
- Employers
- Other pedophiles
- Just by accident

## Types of Investigations

### Agencies/Referrals

- FBI
- ICE
- Postal
- ICAC
- State and Local Law Enforcement
- Probation and Parole
- Other Law Enforcement Jurisdictions

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## Statutes

### ■ Child Pornography

- Production
  - 18 U.S.C. §2251
- Advertisement
  - 18 U.S.C. §2251
- Distribution or receipt
  - 18 U.S.C. §2252(a)(2)
- Possession
  - 18 U.S.C. §2252A(a)(5)(B)
- Viewing
  - 18 U.S.C. § 2252A(2)(5)(B)
- Transfer of obscene material to minors
  - 18 U.S.C. §1470

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## Statutes

### ■ Exploitation

- Coercion & Enticement
  - 18 U.S.C §2422
    - (a) persuade/induct to travel to engage in sex
    - (b) use of mail/interstate commerce to engage in sex

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## Statutes

### Exploitation

- Interstate Transportation
  - 18 U.S.C. §2421, 2423
    - (a) transport of minor for sex
    - (b) travel with intent to engage in sex

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## Forfeiture

### Items used to facilitate the commission of the offenses:

- Computers, web cams
- Cell phones
- Vehicles
- Residence

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## What is “Child Pornography”?

18 U.S.C. §2256(8)

- “Child pornography” means
  - Any visual depiction photograph, film, video, picture computer or computer-generated image
  - real child
  - indistinguishable from a real child
  - adapted from a real child
  - everything except wholly computer generated

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## What is “Sexually Explicit Conduct”?

18 U.S.C. §2256(8)

“sexually explicit conduct” means actual or simulated –

- (i) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;
- (ii) bestiality;
- (iii) masturbation;
- (iv) sadistic or masochistic abuse; or
- (v) lascivious exhibition of the genitals or pubic area of any person

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## What is “Lascivious Exhibition”?

Factors To Consider

- Is the focus on genitals or pubic area?
- Is the setting sexually suggestive?
- Is the child in an unnatural pose or in inappropriate attire considering age?
- Is the child fully or partially clothed or nude?
- Does the depiction suggest coyness or willingness to engage in sexual activity?
- Is the depiction intended to elicit sexual response?

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## PROSECUTION

Steps Followed

- Cases investigated by law enforcement
- Sent to US Attorney’s Office for review and charging decision
- Must charge the “most serious, readily proveable” crime

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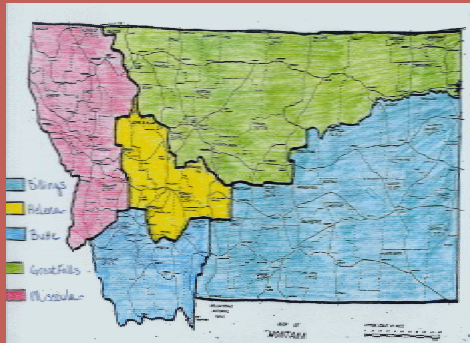
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## Venue



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## Case / Judge Division

- Billings - split between Chief Judge Cebull and Senior Judge Shanstrom
- Helena - split between Judge Molloy and Senior Judge Lovell
- Butte - Judge Molloy
- Great Falls - Judge Haddon
- Missoula - Judge Molloy

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## Release Pending Trial

- Presumption of Detention
- Rebuttal of presumption is possible with a plan
- If released, must be on electronic monitor with a number of conditions

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## Victim Services

### Crime victim rights

- to be reasonably protected from the defendant
- to reasonable, accurate and timely notice of any public court proceeding
- To not be excluded from any such public court proceeding unless the court receives clear and convincing evidence and determines that testimony would be materially altered if victim heard other person's testimony

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## Victim Services

### Crime victim rights

- To be reasonably heard at any public proceeding in the district court involving release, plea, sentencing
- to reasonably confer with the attorney for the Government
- To full and timely restitution
- To proceedings free from unreasonable delay
- To be treated with fairness and respect for dignity and privacy

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## Victim Services

- We must attempt to identify victims in cp images
- Those children/families are afforded victims rights and services
- FBI is maintaining the entire contact database of information on known victims

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## Victim Services

### Database contains

- child and family information
- Investigating agent
- Victim preference for notification
  - Opt out – no notification
  - Opt in – notification only
  - Opt in – notification and victim impact statement to court

## Plea Agreements

- MSRP (Most Serious Readily Provable)
- Get offender evaluated
- Polygraph
- Sentence Recommendation
- Mandatory detention after plea

## Sentencing

- Sentencing Guidelines now advisory
- Still must calculate advisory guideline range:
  - Start with base offense level;
  - Specific offense characteristics added;
    - Base: 22
    - Specific Offense Characteristics:
      - + 2 for kids under 12
      - + 2 - 7 for distribution depending on facts
      - + 4 for S & M or other depictions of violence
      - + 5 for pattern of sexual abuse
      - + 2 for computer
  - Adjustments (victim, role, obstruction, multiple counts, AOR)
  - Determine criminal history
  - Use table to determine range





### Types of Defendants

- █ Complete range of age from 15 to 79 years
- █ Complete range of computer literacy
- █ Vast majority males, few females
- █ No particular denominator



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### PROJECT SAFE CHILDHOOD



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### PROJECT SAFE CHILDHOOD

- █ Modeled on 2001 PSN (Project Safe Neighborhoods)
- █ Comprehensive strategy for deterrence and punishment
- █ Link together federal, state, local and tribal law enforcement
- █ With prosecutors, probation officers, community leaders and schools
- █ Focus on investigation and prosecution of internet-based crimes against kids
- █ Community awareness and educational programs



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## Project Safe Childhood

### Components

- Integrated federal, state and local efforts to investigate and prosecute child exploitation cases and to identify and rescue child victims
- Participation of PSC partners in coordinated national initiatives.
- Increased federal involvement in child pornography and enticement cases.
- Training of federal, state and local law enforcement.
- Community awareness and educational programs.



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## Project Safe Childhood

### Steps

- PSC Coordinator named in each district
- PSC Strategic Plan drafted
- PSC national training
- Increase investigations and prosecutions
- Community awareness



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